IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

(1) LETTERS PATENT APPEAL No 553 of 1994

in

SPECIAL CIVIL APPLICATIONNo 5555 of 1993
with
CIVIL APPLICATION NO. 2653 OF 1994

with

(2) LETTERS PATENT APPEALS NO. 554/94 to 607/94
In
SPECIAL CIVIL APPLICATIONS NO. 5711/93 to 5764/93
with
CIVIL APPLICATIOINS NO. 2654/94 to 2707/94

With

(3) LETTERS PATENT APPEALS NO.608/94 TO 629/94
In
SPL. CIVIL APPLICATIONS NO.6321/93 TO 6342/93
with
CIVIL APPLICATIONS NO.2712/94 TO 2733/94

With

(4) LETTERS PATENT APPEALS NO.630/94 TO 633/94
In
SPL. CIVIL APPLICATIONS NO.6167/93 TO 6170/93
with
CIVIL APPLICATIONS NO. 2708/94 TO 2711/94

With

(5) LETTERS PATENT APPEALS NO. 634/94 TO 639/94
In
SPL. CIVIL APPLICATIONS NO. 5594/93 TO 5599/93
with
CIVIL APPLICATIONS NO. 2734/94 TO 2739/94

With

(6) LETTERS PATENT APPEALS NO. 640/94 TO 651/94
in
SPL. CIVIL APPLICATIONS NO.9938/94 TO 9949/94
with
CIVIL APPLICATIONS NO. 2740 To 2751/94

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL Sd/-
and
MR.JUSTICE P.B.MAJMUDAR Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
Yes

2. To be referred to the Reporter or not? Yes :

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES
No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES
No

5. Whether it is to be circulated to the Civil Judge? No :

MUNICIPAL CORPORATION OF CITY OF AHMEDABAD

Versus

JANAKKUMAR G VYAS

Appearance:
MR PRANAV G DESAI for Appellant
NOTICE SERVED for Respondents No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/12/1999

ORAL JUDGEMENT

(Per : Panchal, J.)

In all these appeals, which are instituted under Clause 15 of the Letters Patent, question of interpretation and ambit of powers of Municipal authorities under section 260 read with section 478 of the Bombay Provincial Municipal Corporations Act,1949 ("the Act" for short) arises for our consideration. As common question of facts and law arise for our consideration in these appeals, we propose to dispose of them by this common judgment.

2. Special CivilApplication No.5555/93 out of which Letters Patent Appeal No. 553/94 arises, was originally filed by 55 persons. Pursuant to order dated June 18, 1993 passed by the Court, petitioners no.56 to 77 were added. However, the Court vide its order dated June 11, 1993 had directed that separate petitions should be filed for petitioners other than petitioner no.1. Therefore, separate petitions being Special Civil Applications No.5711/93 to 5764/93 and Special Civil Applications No. 6321/93 to 6342/93 were filed, which have given rise to Letters Patent Apepals Nos. 554/94 to 607/94 and Letters Patent Appeals No. 608/94 to 629/94. In these groups of appeals, the respondents had prayed that Municipal Corporation of City of Ahmedabad be restrained from demolishing the shops constructed in cellar, ground floor and first floor of the building known as "Vijay Plaza" situated at Kankaria Road, Opposite Abad Dairy, Ahmedabad.

3. Letters Patent Appeals No.630/94 to 633/94 which arise out of judgment rendered in Special Civil Applications No.6167/93 to 6170/93 relate to proposed demolition of shops constructed in the same building i.e. Vijay Plaza. Letters Patent Appeals No.634/94 to 639/94 which arise out of judgment rendered by the learned Single Judge in Special Civil Applications No.5594/93 to 5599/93 relate to proposed demolition of shops constructed in the building known as "Tulsi" situated at Mithakhali, Navrangpura, Ahmedabad.

4. Letters Patent Appeals No.640/94 to 651/94 arise out of judgment rendered by the learned Single Judge in Special Civil Applications No.9938/94 to 9949/94 and relate to proposed demolition of shops constructed in the cellar, ground floor and first floor of the building known as "Vijay Plaza" situated at Kankaria Road, Opp: Abad Dairy, Ahmedabad.

5. In order to resolve the controversy raised in these appeals, it would be advantageous to refer to the case of original petitioners who are in occupation of shops constructed in the building known as "Vijay Plaza" situated at Kankaria Road, Opp: Abad Dairy, Ahmedabad. The case of the original petitioners in Vijay Plaza Building groups of matters was that the shops in question were sold to them by Vijay Housing Development Corporation, which is a partnership firm, for a substantial consideration. According to the original petitioners, they were never informed by Vijay Housing Development Corporation that the shops were,in fact, constructed in the area designated as parking space, residential area and nursing home in the building plan. In the building plan, cellar in which the shops were constructed and sold to the original petitioners, was shown as parking space, while ground floor was designated for shops and residence; whereas the first floor was shown to have been reserved for nursing home. The case pleaded by the original petitioners was that they were handed over possession of the shops since 1989 or immediately thereafter and have been carrying on various professions, vocations etc. What was claimed by the petitioners was that there was a conspiracy to cheat the citizens between Vijay Housing Development Corporation and the officers of Ahmedabad Municipal Corporation, inasmuch as officers of the Municipal Corporation had connived at the unauthorised construction and the Corporation was recovering taxes in respect of the shops. It was alleged by the petitioners that there was a deliberate design to induce the people into a belief that the shops could be utilised by them and there was no violation of any bye-laws or regulations in their construction. According to the original petitioners, about 150 shops were purchased by different persons in the said complex, but none of the occupiers were issued any notice under section 260(1) of the Act. It was stated by the original petitioners that a demolition squad assisted by police personnel had come to demolish the shops on May 17, 1993, as a result of which, Civil Suit No. 2327/93 was filed by Vijay Plaza Shops Vishwas Complex Owners' Association, which was later on withdrawn. The contention of the original petitioners was that they were doing business in the premises in question and had acquired good-will and the Municipal Corporation having collected taxes in respect of the shops and having connived at the construction, was estopped from proceeding to demolish the construction. It was stressed by them that there were several other buildings in which parking space was converted into shops

and such commercial complexes were situated on the C.G.Road, which is a residential zone. According to the petitioners, illegal construction was noticed by the officers of the Corporation in July 1989, but no steps were taken for a long time even after issuance of the notice and on August 31, 1990, a decision was taken to remove the construction without serving notice on them under section 260(1) of the Act. It was also the case of the petitioners that they had spent lacs of rupees for purchase of the shops and action for demolition of shops should not have been taken, as the illegal construction could have been regularised. Under the circumstances, they had filed above-numbered petitions under Article 226 of the Constitution and claimed reliefs to which reference is made earlier.

6. On behalf of the Ahmedabad Municipal Corporation, an affidavit-in-reply was filed by Shri N.M.Boleng and petitions were contested. In the reply, it was inter-alia, stated that the petitioners, who were subsequent transferees of the shops, were not entitled to notices under section 260(1) of the Act and, therefore, the petitions were liable to be dismissed. It was pointed out that no plans were produced for regularisation of the illegal construction and, therefore, the petitioners were not entitled to the reliefs claimed in the petitions.

7. The learned Single Judge after hearing the learned Counsel for the parties and taking into consideration the provisions of the Act as well as decisions cited at the Bar, held that mere recovery of taxes in respect of unauthorised constructions did not create any estoppel nor amounted to waiver and, therefore, Ahmedabad Municipal Corporation was entitled to take appropriate action under the provisions of the Act for removal of unauthorised constructions. The learned Single Judge deduced that though the Act does not provide for giving notice and hearing to the parties, who have subsequently purchased the property from the owner of the building, natural justice requires that such persons should be given notice and hearing, unless it is shown that purchaser had knowledge of the notice for demolition served by the Corporation on the owner of the building. Having regard to the record of the petitions, the learned Single Judge concluded that there were disputes between the parties about time when the transferees acquired the premises i.e. whether before service of the demolition order or thereafter and, therefore, the learned Single Judge opined that this aspect should be considered by the officers of the

Corporation. In view of the abovereferred to conclusions, the learned Single Judge allowed the petitions and passed following operative order :-

"Under the above circumstances, the respondent-Municipal Corporation is directed in these matters to ascertain true facts to enable itself to proceed in accordance with law and in light of the observations made in this judgment. This process it may complete within 4 months from today and until then, there should be no demolition made of the properties in question. In the process the Municipal Corporation may consider whether it could lawfully regularise the construction already made if request for regularisation is made by the concerned petitioners. The Corporation may also keep in mind that the action taken or proposed to be taken in all similar cases should be such as it does not give scope for allegations of discrimination against it. Rule made absolute accordingly in all these matters, with no order as to costs."

8. Mr. P.G.Desai, learned Counsel for the appellant vehemently submitted that chaotic condition would prevail if each among the series of transferees is to be heard in the matter of demolition and, therefore, the appeals should be allowed. It was emphasised that the persons who were in occupation of the premises at the relevant time when the notices under section 260(1) of the Act, alone were entitled to be heard and those who had subsequently come in the picture were not entitled to be heard at all. What was stressed was that an occupier not being a person responsible for unauthorised construction can have no say against the order of demolition of structure raised unauthorisedly and, therefore, judgment rendered by two learned Judges of this Court should be set aside.

9. Though the respondents are duly served, none of them has either appeared in person or made any arrangement for appearance through an advocate.

10. We have heard the learned Counsel for the appellant at length and have also taken into consideration the documents which form part of the original petitions. As the provisions of Section 260 of the Act fall for our consideration, it would be advantageous to reproduce the relevant provisions which

are as under :-

"260(1): If the erection of any building or the execution of any such work as is described in section 254 is commenced or carried out contrary to the provisions of the rules or by-laws, the Commissioner, unless he deems it necessary to take proceedings in respect of such building or work under section 264, shall-

(a) by written notice, require the person who is erecting such building or executing such work or has erected such building or executed such work on or before such day as shall be specified in such notice, by a statement in writing subscribed by him or by an agent duly authorised by him in that behalf and addressed to the Commissioner, to show sufficient cause why such building or work shall not be removed, altered or pulled down, or

(b) shall require the said person on such day and at such time and place as shall be specified in such notice to attend personally or by an agent duly authorised by him in that behalf, and show sufficient cause why such building or work shall not be removed, altered or pulled down.

(2) If such person shall fail to show sufficient cause, to the satisfaction of the Commissioner, why such building or work shall not be removed, altered or pulled down, the Commissioner may remove, alter, or pull down the building or work and expenses thereof shall be paid by the said person".

11. A bare reading of the above quoted provisions makes it very clear that section 260(1) of the Act postulates notice to be served only to the person who has erected building or executed work as described in section 254 of the Act. This section forms part of the group of Sections under sub-head "commencement of work" and follows the provisions requiring notice to be given to the Commissioner accompanied by documents and plans for erecting a new building under section 253 or for executing work mentioned in section 254 of the Act. Section 260(1) does not take care of situation where property has been constructed and subsequently changes hands. It only contemplates a situation where the building is erected or the work as referred to under section 254 of the Act is executed by a person contrary

to the provisions of Rules and By-laws. In order to appreciate the scope and ambit of section 260(1) of the Act it would be relevant to notice the definition of expression "to erect a building" as given in section 253(3) of the Act. The definition of expression "to erect a building", inter-alia, includes any conversion into a stall, shop, warehouse or godown, of any building not originally constructed for use as such. From the definition of the expression "to erect a building" it becomes manifest that ownership of a building would crystalise only on its being constructed and there would be no question of any occupier of a building while it is under construction. After the building comes into existence, the same can be occupied by the owner or by other person. Such occupation can be regarded as unauthorised if it is without obtaining a certificate as contemplated by section 263 of the Act. There is no manner of doubt that the person who has caused the building to be erected by getting it constructed,would be the person erecting such building and, therefore, a notice under section 260(1) of the Act is required to be served on the owner of the building,who is included within the meaning of expression "person who is erecting such building".

12. At this stage, it would be instructive to refer to decision of the Supreme Court in Municipal Corporation of the City of Ahmedabad vs. Ben Hiraben Manilal (1983)2 SCC 422. In the said case, the Supreme Court has interpreted the provisions of section 260(1)(a) and section 478 of the Act and, therefore, it would be relevant to notice facts of the said case. The respondent who was original plaintiff in that case, had purchased a built-up house on March 26, 1960. Walls without sanction of the Municipal Corporation were constructed in 1965. The Estate Officer of the Municipal Corporation had served a notice under section 260(1)(a) of the Act on July 21, 1965. In reply to the notice, it was contended by the respondent that the construction was not made by her, but was in existence when she had purchased the premises. On apprehension of demolition of structure, a suit was instituted by her in City Civil Court, Ahmedabad on September 6, 1965 claiming permanent injunction restraining the Corporation of the City of Ahmedabad from removing the so-called unauthorised construction and for other incidental reliefs. The suit was decreed by the Trial Court, whereupon First Appeal was filed in the High Court. In the First Appeal, decree passed by the Trial Court was affirmed and, therefore, a Letters Patent Appeal was instituted by the Municipal Corporation of City of Ahmedabad. Before the Division

Bench hearing the Letters Patent Appeals,two points were pressed; (i) whether the notice, in the facts and circumstances of the case, was valid, and (ii) whether the Commissioner of the Municipal Corporation had delegated the power of issuing notice to the Estate Officer. On the first point, the Division Bench held that notice impugned was beyond the powers of Municipal Corporation because the notice under the section could only be issued against the person who had constructed the building or who was constructing the building. On the second point, it was concluded that the Commissioner of Municipal Corporation had validly delegated the powers of issuing notice to the Estate Officer. Thereupon, an appeal was filed before the Supreme Court. After construing section 260 and section 478 of the Act, the Supreme Court has ruled that the purchaser of the building is also answerable to the Municipal Corporation for unauthorised construction thereon and service of show-cause notice for removal of unauthorised construction on the purchaser cannot be regarded as invalid. The pertinent observations made by the Supreme Court are as under :-

"Clause (b) of Section 260(1) provides that in the contingency specified in sub-section (1) set out hereinabove, in the alternative the Commissioner shall require the person to show cause why such building and work shall not be removed, altered or pulled down. Sub-section (2) of section 260 provides that if the person concerned fails to show sufficient cause to the satisfaction of the Commissioner or the building is not altered or removed, Commissioiner may remove, alter or pull down the building, the expenses of which shall be paid by the said person. Before us, learned advocate for the appellant, drew our attention to Section 478 of the Act in support of the action taken by the Corporation. Section 260 speaks of erection of any building or the execution of any such work as is described in section 254 "is commenced or carried out contrary to the provisions of the rules or by-laws". Then it further provides that Commissioner shall require the person "who is erecting such building or executing such work or has executed such building or executed such work" to show cause why the infringing portion shall not be demolished or altered or pulled down. Now Section 254 stipulates that notice is to be given

to the Commissioner for addition, alteration etc. in the building.

4. There was no dispute in the instant case that the portion of the building mentioned in the notice of the Corporation was done without the sanction of the Corporation or notice to the Corporation. The expressions used in section 260 by themselves are not quite clear, as to whether it is directed against the person who has commenced or carried out the construction contrary to the provisions of the by-laws or the rules or whether in view of the language used in sub-clause (a) of sub-section (1) of Section 260 namely, "has erected such building" notice, could also be issued to any person other than who has actually built the unauthorised building. But it is submitted that if section 260 is read in conjunction with section 478 of the Act and if so read then it contemplates action both against the person who has commenced or is constructing the building as well as the person who is the owner of the building which has been constructed or erected without the permission and in violation of the laws or the rules. Section 478 is as follows :

478. Works or thing done without written permission of the Commissioner to be deemed unauthorised- (1) If any work or thing requiring the written permission of the Commissioner under any provision of this Act, or any rule, regulation or by-law is done by any person without obtaining such written permission or if such written permission is subsequently suspended or revoked for any reason by the Commissioner, such work or thing shall be deemed to be unauthorised and, subject to any other provision of this Act, the Commissioner may at any time, by written notice, require that the same shall be removed, pulled down or undone, as the case may be, by the person so carrying out or doing. If the person carrying out such work or doing such thing is not the owner at the time of such notice then the owner at the time of giving such notice shall be liable for carrying out the requisition of the Commissioner.

(2) If within the period specified in such written notice the requisitions contained therein are not carried out by the person or owner, as

the case may be, the Commissioner may remove or alter such work or undo such thing and the expenses thereof shall be paid by such person or owner, as the case may be.

5. It is true that the notice impugned in this case was not issued under section 478. This section was also not placed for consideration by the learned Trial Judge or the first appellant court or in the Letters Patent Appeal before the HIgh Court. But the question being one of construction of a provision of a statute, in our opinion,that construction must be so madde as to be in conformity with the other provisions of that particular statute and the provisions must be read as a whole. This being a question of law, this section can be relied upon in support of the notice under section 260(1)(a). If indeed section 478 comprehends both the owner or the occupier who has actually constructed and as well as the owner or occupier of the building which has been unauthorisedly constructed,then the action of the Corporation can be supported. It is well settled that the exercise of a power, if there is indeed a power, will be referable to a jurisdiction, when the validity of the exercise of that power is in issue, which confers validity upon it and not to a jurisdiction under which it would be nugatory, though the section was not referred, and a different or a wrong section of different provisions was mentioned. See in this connection the observations in Pitamber Vajirshet v. Dhondu Navlapa. See in this connection also the observations of this Court in the case of L. Hazari Mal Kuthiala v. I.T.O., Special Circle, Ambala Cantt. This point has again been reiterated by this Court in the case of Hukumchand Mills Ltd. v. State of M.P. where it was observed that it was well-settled that a wrong reference to the power under which action was taken by the Government would not per se vitiate that action if it could be justified under some other power under which Government could lawfully do that act. See also the observations of the Supreme Court in the case of Nani Gopal Biswas v. Municipality of Howrah.

6. The question that, therefore, falls for consideration is, whether section 260(1)(a) of the Act read in conjunction with section 478 of the Act of 1949 empowers the Municipal

> Corporation to take action for demolition or removal of unauthorised construction. Even though the expressions in section 260 are not quite explicit, but if the provisions of section 260(1)(a) are read in conjunction with the latter part of the provisions of section 478 which stipulates specifically that if the person carrying out such work or doing such things is not the owner at the time of such notice, the owner at the time of giving such notice shall also be liable for carrying out the requisition of the Commissioner, makes it clear that the action for demolition or removal can be taken by the Corporation or municipal authorities exercising power under provisions of the said Act against persons who had not themselves built the infringing portion."

From the law laid down by the Supreme Court in the decision quoted above, it becomes abundantly clear that the purpose of building regulations and their object is to regulate the building construction and it would have anomalous result if it is held that if a building is constructed illegally or in an unauthorised manner, action can only be taken against the person who is doing unauthorised act or illegal act, but after the construction of the building is passed over to others, the construction of the building enjoys immunity from any action in respect of the same. As held by the Supreme Court, even though the expressions in section 260 are not quite explicit, the action for demolition or removal can be taken by the Corporation or municipal authorities exercising powers under the provisions of the Act against persons who had not themselves built the unauthorised portion. The decision of the Supreme Court in MUNICIPAL CORPORATION OF CITY OF AHMEDABAD (Supra) is authoritative pronouncement of law that a notice under section 260(1) of the Act can be validly issued by the Corporation against the transferee owner who has not himself built the unauthorised construction and anything said to the contrary in MUNICIPAL CORPORATION OF THE CITY OF AHMEDABAD v. SARDAR PRITAMSING, 1977 GLR 280 is no longer good law.

13. As held by the Supreme Court, section 260(1) of the Act has to be read in conjunction with section 478 of the Act and if section 260(1) of the Act is so read, it becomes manifest that a written notice can be given to a person carrying out work or doing a thing and if such person is not owner at the time of such notice, then owner is liable for carrying out the requisition for

removal or pull down the work or to undo the thing. Section 478 of the Act would apply where work or thing is done without written permission of the Commissioner which is deemed to be unauthorised. Section 478 clearly postulates change of hands and can be invoked against the subsequent owner. Though this section does not specify the persons who should be heard, the duty to hear is implied even when action is taken under this provision. The learned Single Judge, with respect, has rightly held tht rights in property, personal liberty, status, immunity from penalities or other physical imposition, interests in preserving one's livelihood and reputation and reasonable expectatioins of preserving or even acquiring benefits such as licences, would be amongst the interests to which procedural protection in form of hearing should be accorded. There is no manner of doubt that fair procedural standards must be observed where deprivation of a legally recognised interest is likely to result. When the direct impact of a decision is so adverse that a refusal by the Court of affording opportunity of being heard would be considered an afront to justice, the right to be heard becomes obvious. The subsequent purchaser is entitled to point out to the authorities that for the reasons which may be pointed out by him, demolition of unauthorised construction should not be ordered and consideration of those factors would enable the competent authority to pass a just order. It hardly needs to be emphasised that order of demolition of construction entails serious civil consequences on the rights of the owners and occupiers and may in a given case affect livelihood if any vocation is carried out in such a place. Therefore, it is clear that before passing the order of demolition of structure, hearing should be afforded to the persons concerned i.e. owner and occupier of the premises in question.

14. It is true that in section 478 of the Act it is not mentioned that subsequent purchaser should be served with a notice before demolition of unauthorised construction is ordered. Generally, no provision is found in any statute for the observance of the principles of natural justice by the adjudicating authorities. The question then arises whether the adjudicating authority is bound to follow the principles of natural justice. The phrase natural justice is not capable of static and precise definition. However, a duty to act fairly, i.e. in consonance with the fundamental principles of substantial justice,is generally implied, irrespective of whether the power conferred on statutory body or tribunal is administrative or quasi-judicial. The object underlying the rules of natural justice is to prevent

miscarriage of justice and secure fair play in action. Natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions of proceedings be given adequate notice of what is proposed so that they may be in a position, (a) to make representation on their own behalf, (b) or to appear at a hearing or inquiry (if one is held); and (c) to prepare their own case effectively and answer the case (if any) they have to meet. All actions against the affected parties i.e. which involve penal or adverse consequences must be in accordance with the principles of natural justice. The rules of natural justice do not supplant law, but supplement it. If a statutory provision either specifically or by inevitable implication excludes the application of the rules of natural justice, then the Court cannot ignore mandate of the legislature. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provisions conferring the power, the nature of the power, the purpose for which it is conferred and the effect of the exercise of that power. As is well settled, rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But, there are two fundamental maxims of natural justice, viz. (i) audi alteram partem and (ii) nemo judex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met, and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. It is not permissible to interpret any statutory instrument so as to exclude natural justice, unless the language of the instrument leaves no option to the Court. Procedural fairness embodying natural justice is to be implied whenever action is taken affecting the rights of parties. As laid down in Liberty Oil Mills v. Union of India, (1984) 3 SCC 465 (484-87) procedural fairness embodying natural justice is to be implied whenever action is taken affecting the rights of parties. In A.K.Kraipak v. Union of India, (1969) 2 SCC 262 the Supreme Court has propounded that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice and these rules can operate only in areas not covered by any law validly made because they do not supplant the law of the land, but supplement it. In Maneka Gandhi v. Union of India, (1978) 1 SCC 248 what is highlighted by the Supreme Court is that even where there is no specific provision in a statute or rules made thereunder for

showing cause against action proposed to be taken against an individual which affects the rights of that individual, the duty to give reasonable opportunity to be heard has to be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. Having regard to the provisions of the Transfer of Property Act, 1882, it is manifest that a transfer of property passes forthwith to the transferee all the interests which the transferee is then capable of passing in the property and the legal incidence thereof. Therefore, once it is held that a property is liable to be demolished on its transfer, the same incident would follow and the transferee will take the property subject to its being demolished under the demolition order already made. The purchaser of the property with the knowledge of demolition order validly made cannot insist that fresh process of hearing should be initiated. The proceedings concluded against the transferor would remain binding on the subsequent purchaser also. An order of demolition made under the Act and served on the owner would ordinarily be disclosed to the transferee and, therefore, the transferee would not acquire a better right than the transferor. Whether such knowledge to the purchaser can be attributed or not would depend on facts of each case, but if the property is transferred before passing of demolition order, the subsequent purchaser will have to be heard before final order of demolition is passed.

15. In view of the above discussion, we are of the opinion that the direction given by the learned Single Judge to the Municipal Corporation to ascertain the true facts to enable itself to proceed in accordance with law and in light of the observations made in the impugned judgment, cannot be said to be erroneous or illegal so as to warrant interference of this Court in these groups of appeals.

16. We may mention that feeling aggrieved by certain directions which were given by the learned Single Judge in Special Civil Applications No.9938/94 to 9949/94, Letters Patent Appeals No. 871/95 to 881/95 were filed by the original petitioners. The Division Bench comprising the then Hon'ble Chief Justice K.G.Balakrishnan and Mr.Justice S.D.Dave has dimissed the appeals by two different judgments dated July 10, 1998 and June 17, 1999. The Division Bench has, inter-alia, held as under :-

"We have heard the learned Counsel and have perused the impugned order dated 1st September,

1994. The learned Single Judge has given certain directions to the Municipal Corporation as to how it should proceed and for that purpose time limit has also been fixed. Such directions,in our opinion, are innocuous directions to be followed by Municipal Corporation and direction has also been given to consider whether it could lawfully regularise the constructions already made.

We do not find any scope for interference with this order passed by the learned Single Judge, as in our opinion the directions issued by the learned Single Judge to render substantial justice between the parties and the impugned order is just and fair order which hardly warrants any interference."

Thus, the appeals filed by the original petitioners against the judgment which is impugned in the present appeals is found to be just and fair by another learned Division Bench of coordinate jurisdiction. On overall view of the matter, we are satisfied that the interpretation placed by the learned Single Judge on Section 260(1) of the Act is in consonance with the law declared by the Supreme Court in several reported decisions and furthers the interest of justice. By the impugned judgment, a balance has been struck between the subsequent purchaser as well as powers of demolition to be exercised by the Municipal authorities. The impugned judgment thus being just and in consonance with the principles of fair play, hardly warrants our interference. The appeals, therefore, cannot be allowed and are liable to be dismissed.

For the foregoing reasons, all the above-numbered appeals fail and are dismissed, with no orders as to costs.

Civil Applications which are filed for stay of the operation, implementation and execution of the judgment rendered by the learned Single Judge which is impugned in the appeals, do not survive, as the appeals are dismissed. Therefore, the Civil Applications are dismissed, with no order as to costs.

****

(patel)